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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,178	01/29/2002	Jeffrey L. Throop		3689

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Western Patent Group
6020 Tonkova Trail
Georgetown, TX 78628

EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/058,178	Applicant(s) THROOP, JEFFREY L.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 and 20-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) = | 6) <input type="checkbox"/> Other: . |

DETAILED ACTION

Restriction Requirement

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8 and 18-19, drawn to a mobile concrete mixer, classified in class 366, subclass 50.
 - II. Claims 9-17 and 20-26, drawn to a process for producing a set concrete structure or a process for laying a road surface, classified in class 404, subclass 72.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as a process which does not direct the concrete to an excavation or hole and then forms the surface of the concrete into a desired form, i.e., the mixed concrete could be discharged into concrete forms or into a transport truck.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because the search required for each group is a divergent search, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Christopher Whewell on 25 SEP 2003 a provisional election was made with traverse to prosecute the invention of Group I, apparatus claims 1-8 and 18-19. Affirmation of this election must be made by applicant in replying to this Office action. Method claims 9-17 and 20-26 are thereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on 19 APR 2002 has been considered by the examiner. Note the attached PTO-1449 form.

Drawings

6. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

Specification

7. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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8. The Abstract of the Disclosure is objected to because:

- a. the abstract is too long.
- b. the abstract is not a single paragraph.

9. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

10. A proper abstract on a separate sheet is required.

11. The title is acceptable.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. **Claims 1, 2, 4, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman (US 4,538,916).**

The patent to Zimmerman '916 discloses a mobile device useful for on-site mixing of concrete precursors to form a fresh concrete which comprises a wheeled-base portion 12 that further includes at least one storage compartment 24 for containing a concrete precursor, wherein said storage compartment comprises a bottom portion having an outlet portion (Fig. 9); a conveyor belt means 91, 132 with a given width having a receiving end and a discharge end, said conveyor belt means 91 being disposed beneath said storage compartment in sufficient proximity to the outlet portion of the storage compartment 24 to receive a quantity of said concrete precursor, with the concrete precursor comprising a portion that contacts the conveyor belt means 91 and a top surface portion; at least one adjustable gate means 116 or 118 (Fig. 11) disposed along the travel path of said conveyor in a position that is above the conveyor belt and in contact with the top surface of said quantity of said concrete precursor; a cement powder storage compartment 36 having an outlet (Fig. 7), wherein said outlet is disposed in sufficient proximity to deliver a quantity of cement powder to the top surface of said concrete precursor as it travels along said conveyor, wherein said outlet of said cement powder storage compartment includes an airlock rotary vane feeder 40; an auger inlet chamber 240 having a bottom portion and disposed at the delivery end 136 of said conveyor belt means, which inlet chamber is adapted to receive the cement powder and concrete precursor from the delivery end of the conveyor belt means, wherein said auger inlet chamber includes a means for adding a desired quantity of water from water storage 38 to said cement powder and concrete precursor which enters said inlet chamber 240 (col. 4, lines 65-67; col. 5, lines 9-10; and col. 10, lines

15-17); and a screw auger 266 having an inlet end and an outlet end 48, wherein said inlet end is disposed in the bottom of said auger inlet chamber and is adapted to receive said cement powder, concrete precursor, and water, from which fresh concrete may be caused to emerge from said outlet end 48 of said screw auger during its rotation; means for conveying the mixed concrete from the outlet end 48 of the auger (col. 10, lines 42-45); said storage compartment includes a concrete precursor that comprises one or more materials selected from the group consisting of coarse aggregates and fine aggregates (col. 4, lines 54-56); the mixing device being connected to a truck 20 which is inherently capable of movement at the recited rate of speed; and said storage compartment comprises a plurality of compartments 24 and 26, separated by at least one partition means 28.

14. Claims 1, 2, 3, 4, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tetoldini (US 5,893,639).

The patent to Tetoldini (US 5,893,639) discloses a mobile device useful for on-site mixing of concrete precursors to form a fresh concrete which comprises a wheeled-base portion 1 that further includes at least one storage compartment 8 for containing a concrete precursor, wherein said storage compartment comprises a bottom portion having an outlet portion (Fig. 2); a conveyor belt means 10 with a given width (col. 4, lines 20-24) having a receiving end and a discharge end, said conveyor belt means 10 being disposed beneath said storage compartment in sufficient proximity to the outlet portion of the storage compartment 8 to receive a quantity of said concrete precursor, with the concrete precursor comprising a portion that contacts the conveyor belt means

10 and a top surface portion; at least one adjustable gate means 19 disposed along the travel path of said conveyor in a position that is above the conveyor belt and in contact with the top surface of said quantity of said concrete precursor; a cement powder storage compartment 9 having an outlet 20, wherein said outlet is disposed in sufficient proximity to deliver a quantity of cement powder to the top surface of said concrete precursor as it travels along said conveyor, wherein said outlet of said cement powder storage compartment includes an airlock rotary vane feeder 30 (Fig. 7); an auger inlet chamber 23 having a bottom portion and disposed at the delivery end of said conveyor belt means 10, which inlet chamber is adapted to receive the cement powder and concrete precursor from the delivery end of the conveyor belt means, wherein said auger inlet chamber includes a means 32a for adding a desired quantity of water from water storage 32 to said cement powder and concrete precursor which enters said inlet chamber 23 (col. 5, lines 20-23); and a screw auger 24 having an inlet end and an outlet end 25, wherein said inlet end is disposed in the bottom of said auger inlet chamber and is adapted to receive said cement powder, concrete precursor, and water, from which fresh concrete may be caused to emerge from said outlet end 25 of said screw auger during its rotation; means 26 for conveying the mixed concrete from the outlet end 25 of the auger in the form of a chute 26; said storage compartment includes a concrete precursor that comprises one or more materials selected from the group consisting of coarse aggregates and fine aggregates (col. 4, lines 1-4); the mixing device being connected to a truck (Fig. 8) which is inherently capable of movement at the recited rate

of speed; and said storage compartment comprises a plurality of compartments as seen in Fig. 8, separated by partition means 27.

15. Claims 1, 2, 3, 4, 6, 7, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman (US 4,781,466).

The patent to Zimmerman (US 4,781,466) discloses a mobile mixing plant useful for on-site mixing of concrete precursors to form a fresh concrete which comprises a wheeled-base portion 12 that further includes at least one storage compartment 14 or 16 for containing a concrete precursor having open top ends as seen in Fig. 1; wherein said storage compartment comprises a bottom portion having an outlet portion (Fig. 3); a conveyor belt means 21 or 22 with a given width having a receiving end and a discharge end, said conveyor belt means 21 or 22 being disposed beneath said storage compartment in sufficient proximity to the outlet portion of the storage compartment 14 or 16 to receive a quantity of said concrete precursor, with the concrete precursor comprising a portion that contacts the conveyor belt means 21 or 22 and a top surface portion; at least one adjustable gate means 26 disposed along the travel path of said conveyor in a position that is above the conveyor belt and in contact with the top surface of said quantity of said concrete precursor; a cement powder storage compartment 18 having an outlet (Fig. 4), wherein said outlet is disposed in sufficient proximity to deliver a quantity of cement powder to the top surface of said concrete precursor as it travels along said conveyor, wherein said outlet of said cement powder storage compartment includes an airlock rotary vane feeder 25 (Fig. 4); an auger inlet chamber (proximate 36) having a bottom portion and disposed at the delivery end of

said conveyor belt means, which inlet chamber is adapted to receive the cement powder and concrete precursor from the delivery end of the conveyor belt means, wherein said auger inlet chamber includes a means for adding a desired quantity of water from water storage 17 to said cement powder and concrete precursor which enters said inlet chamber (col. 4, lines 25-32); and a screw auger 25 having an inlet end and an outlet end, wherein said inlet end is disposed in the bottom of said auger inlet chamber and is adapted to receive said cement powder, concrete precursor, and water, from which fresh concrete may be caused to emerge from said outlet end of said screw auger during its rotation; means 37 for conveying the mixed concrete from the outlet end of the auger in the form of a chute 37 (Figs. 1-2); said storage compartment includes a concrete precursor that comprises one or more materials selected from the group consisting of coarse aggregates and fine aggregates (col. 3, lines 42-46); the mixing plant being connected to a plant motion truck 10 which is inherently capable of movement at the recited rate of speed; said storage compartment comprises a plurality of compartments 14, 16 as seen in Fig. 1, separated by partition means as seen in Fig. 1; a supply truck T with a storage vessel thereon (Fig. 2) which discharges aggregate material into a supply conveyor means 40 having a first conveyor means 44 having a receiving end fed from the supply truck T and disposed over the top of the plant motion truck 10 and is oriented so that its receiving end is disposed in the front of said truck 10 and its discharge end 55 is disposed to the rear of the truck's cab 81; the supply conveyor means 40 having a second conveyor means having a receiving end and a discharge end, wherein the receiving end of the second conveyor means is disposed to

receive the materials discharged from the discharge end of said first conveyor means and the discharge end of the second conveyor means replenishing the supply of aggregate materials to the aggregate storage compartments 14 and 16; the plant motion truck and supply truck being inherently capable of being moved at the same speed relative to the ground to prevent separation of the trucks during the aggregate supply procedure or to prevent unwanted collision of the trucks.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman (US 4,538,916).

The patent to Zimmerman (US 4,538,916) discloses that the conveyor belt means 91, 132 has a given width and moves at a rate of speed to convey the material but does not disclose the recited size or speed. It would have been an obvious matter of design choice to have formed the width of the conveyor belt means in Zimmerman (US 4,538,916) from any desired width, including within the recited range of widths, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). With respect to the

recited speed, while deemed a functional rather than a structural limitation of the conveyor belt means, the conveyor belt means of Zimmerman (US 4,538,916) is considered to be inherently capable of being moved within the broad range of speeds claimed by the drive means shown in Figure 4.

18. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tetoldini (US 5,893,639).

The patent to Tetoldini (US 5,893,639) discloses that the conveyor belt means 10 has a given width as noted above and moves at a rate of speed to convey the material but does not disclose the recited size or speed. It would have been an obvious matter of design choice to have formed the width of the conveyor belt means in Tetoldini from any desired width, including within the recited range of widths, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, supra. With respect to the recited speed, while deemed a functional rather than a structural limitation of the conveyor belt means, the conveyor belt means of Tetoldini (US 5,893,639) is considered to be inherently capable of being moved within the broad range of speeds claimed by the drive means 12.

19. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman (US 4,781,466).

The patent to Zimmerman (US 4,781,466) discloses that the conveyor belt means 21 has a given width and moves at a rate of speed to convey the material but does not disclose the recited size or speed. It would have been an obvious matter of

design choice to have formed the width of the conveyor belt means in Zimmerman (US 4,781,466) from any desired width, including within the recited range of widths, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, supra. With respect to the recited speed, while deemed a functional rather than a structural limitation of the conveyor belt means, the conveyor belt means of Zimmerman (US 4,781,466) is considered to be inherently capable of being moved within the broad range of speeds claimed by the drive means 24.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses mobile mixing plants.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (703) 308-0112. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in cursive script, appearing to read "Charles", followed by a long, horizontal, wavy flourish.

Charles E. Cooley
Primary Examiner
Art Unit 1723

26 September 2003